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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/825,532  | 04/15/2004  | Werner Mezger        | 10191/3782          | 8237             |
| 26646   | 7590        | 02/07/2006           | EXAMINER            |                  |
| KENYON & KENYON LLP<br>ONE BROADWAY<br>NEW YORK, NY 10004 |             |                      | RIDDLE, KYLE M      |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3748                |                  |
| DATE MAILED: 02/07/2006                                   |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/825,532

Applicant(s)

MEZGER ET AL.

Examiner

Kyle M. Riddle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Inoue et al. (U.S. Patent 6,330,870).

Re claims 1, 8-10, Inoue et al. disclose a variable valve timing system comprising:

- a variable timing adjustor 18 controlled by the engine control circuit 18 using cam angle sensor 19 and crank angle sensor 20 to calculate real valve timing versus a target camshaft phase (column 9, lines 22-41);

- determining a target valve timing based on sensor input and calculating a real valve timing, and controlling the hydraulic control valve 29 of the valve timing adjustor 18 to adjust the real valve timing to the target valve timing (column 12, lines 10-23);

- determining whether the lock pin has been released (column 17, lines 49-55, column 18, lines 62-67 with column 19, lines 1-2, column 23, lines 16-17, lines 30-40);

- setting the lock position to an intermediate phase position suited for an engine start reference position (column 11, lines 6-11), and when adaptation has not occurred or it is judged that the valve timing adjustor operation is poor, operating the valve timing adjustor 18 to the predetermined reference locked position (column 22, lines 4-25);

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- varying the valve timing for various engine speeds to include idling (column 13, lines 4-12);

- executing via a microcomputer of the engine control circuit 18 the computer programs stored in the packaged ROM or storage media (column 18, lines 62-67 with column 19, lines 1-2).

Re claim 2, Inoue et al. disclose the valve timing adjustor 18 maintained in the locked position until the coolant temperature is outside a predetermined temperature range (column 30, lines 19-25) or based on engine temperature or temperature of the oil (column 30, lines 45-47), or the variable valve timing adjustor 18 is set in the vicinity of the lock position when the adjustor 18 is judged to be poor or the coolant temperature is less than a predetermined range (column 22, lines 5-25), or failure of the lock release is detected (column 17, lines 49-55, column 18, lines 62-67 with column 19, lines 1-2, column 23, lines 16-17, lines 30-40).

Re claim 4, detecting an independent locking condition when the phase is in the vicinity of the intermediate lock position based on target angles (setpoints) (column 23, lines 30-60).

Re claim 5, detecting a failure of the lock release by determining phase angles over a predetermined time period (column 17, lines 49-57, column 23, lines 65-67 with column 24, lines 1-4, column 30, lines 19-22, column 37, lines 36-43).

Re claims 6, 7, 11, and 12, initiating a locking release program, detecting if locking has been released, and repeating the release procedure if failure of locking is detected (column 17, lines 49-55, column 23, lines 3-7, lines 61-67 with column 24, lines 1-4, column 30, lines 19-23, column 37, lines 36-43).

*Response to Arguments*

3. Applicant's arguments filed 19 December 2005 have been fully considered but they are not persuasive.

4. Applicant argues on page 7, middle of the page, that Inoue et al. do not disclose an additional reference position for any operating mode to include rendering idling possible and described in claim 1. Examiner disagrees. Firstly, claim 1 mentions target phase angles and controlling the camshaft to the desired angles, and, when no release command and an adaptation has not occurred, the device is controlled to a predefinable reference position. No mention of "additional" reference positions are cited. Inoue et al. teach setting the camshaft phase to a target reference position of a predetermined value (predefinable reference position) in the vicinity either side of a locked position by a value of  $\alpha$ , also suggesting more than one reference position (column 22, lines 4-22). The argument on the bottom of page 7 continuing to the top of page 8 regarding the differences of the applicant's invention versus the function of the cited reference of Inoue et al. are not valid in the examiner's viewpoint since those differences are not incorporated into the claimed language interpreted in their broadest sense. Regarding the argument in the first full paragraph on page 9, last line, concerning that an adaptation must have already occurred in the device of Inoue et al., the examiner disagrees in that an adaptation at engine start may not have occurred in the Inoue et al. device. Furthermore, adaptations may have occurred previously, but due to failure of the locking pin to release, the step of presently determining an adaptation has not occurred (even though previous adaptations have occurred) would read on the claim language. Again, the examiner believes that all the limitations cited in the claims and interpreted in their broadest sense are contained in the device of Inoue et al.

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*Communication*

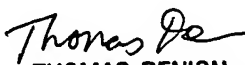
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle M. Riddle whose telephone number is (571) 272-4864. The examiner can normally be reached on M-F (07:30-5:00) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kyle M. Riddle  
Examiner  
Art Unit 3748

kmr

  
THOMAS DENION  
SUPERVISORY PATENT EXAMINER  
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